IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.143 OF 2005

Pandit Dadoba Sutar ... Petitioner

V/s.

Madhukar Pandurang Dandekar ... Respondent

Mr.T.S. Ingale for Petitioner
Mr.R.S. Apte for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 28, 2005**

P.C.:

. The Petition challenges the concurrent findings of facts arrived at by the Courts below that the Petitioner had committed nuisance and that the respondent required the suit premises bonafide. It is contended on behalf of the Petitioner that acetylene gas which was being used for welding was no longer used when the suit was filed in view of the injunction obtained by the respondent-landlady in another suit. It is, therefore, submitted on behalf of the Petitioner that there was no cause of action in 1994 for the respondent-landlady to file a suit on the issue of nuisance as he had stopped using acetylene gas. It is further submitted that the Petitioner was residing with 16 members in the suit premises as well as conducting a

business therein. The landlady wants the premises to conduct a business to support herself. According to the Petitioner, the landlady has sufficient space to conduct such a business and, therefore, there is no bonafide requirement of the landlady for the suit premises.

2. Reliance is placed on the judgement of the Supreme Court in the case of *Rafat Ali v/s. Sugni Bai & others* reported in **1999 Bom.R.C. 263** in support of his submission that every nuisance need not be actionable. It must be a nuisance to a perceptible degree and damage on account of such nuisance should be substantial. Both the Courts below have come to the conclusion that the Petitioner has violated the provisions of Bombay Rent Act and, therefore, the Respondent-landlady was entitled to the premises under section 13(1)(c). The Petitioner was conducting a workshop and using Acetylene gas causing nuisance to not only the landlady but to others living around that area. It could hardly be said that this nuisance was a mere inconvenience. The damage which could be presumed to be caused by using Acetylene gas is not only perceptible but the nuisance is certainly actionable. Merely because the Petitioner had discontinued the use of acetylene after the injunction against him it would not preclude the Respondent from taking action against him under section 13(1)(c).

3. I see no reason to differ with the findings of the Courts below that the nuisance caused by the Petitioner entitled the Respondent to a decree against the Petitioner under section 13(1)(c).

4. The contention raised on behalf of the Petitioner to deny the claim of the Respondent-landlady that she requires the premises bonafide is that the suit premises were admeasuring only 757.26 sq.ft whereas the landlady occupies an area of 2751.80 sq.ft. It is a settled position of law that a landlord would be the best judge as to which premises would be suitable for her to run a business. The findings of both the Courts below are that the requirements of the landlady are bonafide and hence, decreed the suit. These findings are not required to be disturbed. Hence, Petition is dismissed.

5. Mr.Ingale prays for stay of this order for eight weeks. Stay granted for eight weeks on condition that the Petitioner and all adult members of his family file an undertaking in this Court in the usual terms within two weeks from today.